

April 27, 2015

Via email

Kathleen H. Burgess
Secretary
State of New York Department of Public Service
Three Empire State Plaza, 18th Floor
Albany, New York 12223-1350
secretary@dps.gov

Subject: Submittal of comments on the Petition of the Joint Utilities for Commission Approval of Contingency Tariff to Address Demand Response Issues (Case 15-E-0100); *New York State Register* (I.D. No. PSC-10-15-00009-P)

Dear Secretary Burgess:

The New York Independent System Operator, Inc. provides the attached comments in the above-captioned proceeding regarding the generic Backstop Contingency Tariff filed by the six New York State public utilities.

Please contact me at (518) 356-7530 or at mlampi@nyiso.com if you have any questions or concerns.

Very truly yours,

/s/ Mollie Lampi

Mollie Lampi
Assistant General Counsel
New York Independent System Operator

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition of the Joint Utilities for Commission
Approval of Contingency Tariff to Address
Demand Response Issues**

**Case 15-E-0100
I.D. No. PSC-10-15-00009-P**

COMMENTS OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to the Notice of Proposed Rulemaking published in the March 11, 2015 edition of the *New York State Register* (I.D. No. PSC-10-15-00009-P), the New York Independent System Operator, Inc. (“NYISO”) respectfully submits these comments in the above-captioned case.

I. INTRODUCTION

The NYISO is an independent not-for-profit corporation responsible for the reliable operation of New York’s transmission system and the dispatch of electric power generators. The NYISO also administers bulk power markets which include demand side resources providing wholesale supply services. The NYISO currently administers four demand response programs, two to provide supply in the wholesale energy and ancillary services markets, and two - the Emergency Demand Response Program (“EDRP”) and Special Case Resource (“SCR”) program - to provide bulk power reliability-needed relief. EDRP resources and SCRs provide load reduction when called upon because the NYISO has forecast a reserves shortage or other

condition in which load reduction is necessary to help maintain the reliable operation of the bulk power system. SCRs are eligible suppliers in the NYISO's capacity market.

II. BACKGROUND

The New York State Public Service Commission ("Commission") is seeking comment on a generic Backstop Contingency Tariff filed by the six New York State public utilities ("Joint Utilities").¹ The Joint Utilities noted that the New York State Department of Public Service staff ("Staff") had recommended Commission-jurisdictional demand response tariffs be developed to substitute for the SCR program if the NYISO was no longer allowed to compensate demand response providers as supply resources in the wholesale capacity market.²

Staff's recommendation grew out of the uncertainty placed on the future availability of demand response as a supply resource in the NYISO capacity market by the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court") decision in *Electric Power Supply Association v. Federal Energy Regulatory Commission*.³ In vacating Federal Energy Regulatory Commission ("FERC") Order No. 745,⁴ the D.C. Circuit Court found that FERC had encroached on the state's exclusive jurisdiction to regulate the retail market and had, thereby,

¹ Case 15-E-0100, *Petition of the Joint Utilities* (February 23, 2015), ("Petition").

² *Id.* p. 3-4.

³ 753 F.3d 216, (D.C. Cir. 2014), (*EPSA v. FERC*). The judgment of the D.C. Circuit Court was entered on May 23, 2014. Petitions for a hearing *en banc* were denied on September 17, 2014. On October 20, 2014 the D.C. Circuit Court stayed issuance of the order regarding Order No. 745 pending U.S. Supreme Court Review. Petitions for a *writ of certiorari*, filed by several parties to review the judgment of the D.C. Circuit Court in this case, were scheduled for discussion at the U.S. Supreme Court on April 24, 2015.

⁴ Demand Response Compensation in Organized Wholesale Energy Markets, 134 FERC ¶ 61,187 (Mar. 15, 2011).

exceeded its authority.⁵ While FERC Order No. 745 addressed payment for demand response resources in energy markets, the D.C. Circuit Court's decision in *EPSA v. FERC* has the potential to disrupt all of the NYISO's demand response programs if the decision's underlying jurisdictional determination were applied more broadly.

III. COMMENTS

The generic Backstop Contingency Tariff filed by the Joint Utilities would establish a Bulk Power Reliability Demand Response Program under the Commission's jurisdiction to go into effect should the NYISO no longer be able to pay demand response as a supply resource in its capacity market. Pursuant to the generic tariff, enrolled demand response would receive a reservation payment for agreeing to be available to reduce load when called upon by the NYISO and a separate energy reduction (or performance) payment to compensate them when they actually reduce load in response to a NYISO request.⁶

The Bulk Power Reliability Demand Response Program is designed to work in tandem with market rule revisions the NYISO is currently developing should it no longer be able to pay demand response as a supply resource. The NYISO's backstop demand response tariff revisions would allow it to call upon demand response resources enrolled in programs such as the one being proposed by the utilities when necessary to preserve system reliability. The new market rules would treat the enrolled demand response as an offset to Load Serving Entities' capacity purchase obligations rather than as capacity market supply resources.⁷

⁵ 753 F.3d at 219, 225.

⁶ The NYISO confirms that it will continue its administrative and operational role under the contingency backstop program.

⁷ The NYISO will be sharing drafts of its backstop demand response tariff revisions with stakeholders, including Staff and the Joint Utilities, over the next several weeks. The NYISO currently

In requesting Commission approval of the generic Backstop Contingency Tariff, the Joint Utilities explain:

The proposed contingency [tariff] . . . addresses the uncertainty resulting from the federal proceedings and would maintain the availability of bulk power system reliability-based demand response options for customers and utilities if compensation can no longer be provided by the NYISO. A Commission order approving this generic interim contingency tariff, and the subsequent filing of individual utility tariffs, would put in place a plan to preserve these programs until the federal jurisdictional uncertainty is resolved and a more permanent long-term solution can be devised. (footnote omitted)⁸

The NYISO agrees with the need for a Commission-jurisdictional contingency demand response program to become effective should FERC require the NYISO to terminate the use of demand response as a supply resource in its capacity market. The NYISO agrees that it is important to continue to recognize the contributions of demand response to the bulk power transmission system. SCR load reduction provides a significant additional resource to maintain a reliable electric system during high load days or days when unforeseen events substantially reduce the level of resources available to serve load.

The Joint Utilities Backstop Contingency Tariff acts to ensure that demand resources remain available to assist in maintaining the reliability of the bulk power system. The NYISO believes the Joint Utilities' proposed generic Backstop Contingency Tariff complements the backstop demand response tariff revisions that the NYISO is developing.

expects that it would file its contingency tariff revisions for FERC acceptance after FERC issues an order or other guidance.

⁸ Petition, p. 4

The NYISO looks forward to continued interaction with the Joint Utilities on their generic Backstop Contingency Tariff and their respective individual conforming tariffs. The NYISO recommends that the Commission approve the generic Backstop Contingency Tariff.

Respectfully submitted;

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